Gerrino, Inc. d/b/a Gerrino Restaurant *and* Hotel Employees and Restaurant Employees Union, Local 69, AFL–CIO. Case 22–CA–17460[1]

January 21, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On October 17, 1991, Administrative Law Judge Steven Davis issued the attached decision. The General Counsel filed exceptions and a supporting brief and the Respondent's counsel filed a letter in response to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Gerrino, Inc. d/b/a Gerrino Restaurant, Hoboken, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

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[1] The case number which appeared on the judge's decision was in error. The correct number is reflected in the caption of this decision.

[2] We agree with the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) of the Act by withdrawing recognition and refusing to bargain with the Union before a reasonable period for bargaining had elapsed. In light of that finding, we do not pass on the judge's ''arguendo'' analysis concerning the Respondent's basis for doubting the Union's majority status.

Julie L. Kaufman, Esq., for the General Counsel.
D. Gayle Loftis, Esq., of Hackensack, New Jersey, for the Respondent.
Larry M. Cole, Esq. (Cole & Cole, Esqs.), of Jersey City, New Jersey, for the Union.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Pursuant to a charge filed by Hotel Employees and Restaurant Employees Union, Local 69, AFL–CIO (Union) on January 17, 1991, a complaint was issued against Gerrino, Inc. d/b/a Gerrino Restaurant (Respondent) on March 1, 1991. The complaint alleges that Respondent unlawfully refused to bargain with the Union by withdrawing recognition from the Union at a time when it did not have a good-faith doubt, based on objective considerations, as to the Union's majority status. Respondent's answer denied the material allegations of the complaint, and set forth certain affirmative defenses, which will be discussed, infra. On May 20, 1991, a hearing was held before me in Newark, New Jersey.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New Jersey corporation having its office and place of business in Hoboken, New Jersey, has been engaged in the operation of a public restaurant selling food and beverages.

During the past 12 months, Respondent derived gross revenues in excess of $500,000 from its operations, and it purchased goods and materials valued in excess of $5000 directly from suppliers located outside New Jersey. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

The parties have had no prior collective-bargaining relationship. In settlement of a prior unfair labor practice case, Respondent agreed to bargain collectively, in good faith with the Union, as the exclusive collective-bargaining agent in the following collective-bargaining unit:

> All full time employees including kitchen employees, chef, bartenders, waiters, waitresses, bus boys, cooks and dishwashers, employed at its Hoboken, New Jersey facility, but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, and any individuals employed by parent or spouse.

Respondent, in its answer, admits that on April 28, 1990, it agreed to recognize and bargain with the Union in that unit, pursuant to an informal settlement agreement. It should be noted that that settlement agreement also settled certain allegations of 8(a)(1) conduct allegedly committed by Respondent.

In June 1990, Union Attorney Sheldon Cohen spoke to Patricia Burke, the secretary of Respondent's attorney, D. Gayle Loftis. Cohen suggested certain dates for bargaining sessions, but Burke told him that Loftis was unavailable on those dates. Nevertheless, Cohen sent a letter to Respondent's attorney on June 27, 1990. The letter, which was sent by telecopier and mail, stated Cohen's intent to begin negotiations. He suggested meeting on July 2, 5, 6, or 9, dates which he had already been told were unacceptable. The letter invited Loftis to offer alternative dates if those were not acceptable.

By letter dated June 29, Burke offered five dates in mid-July for bargaining. The letter also stated that Loftis ''has been waiting for an initial proposal from the Union since May 24, 1990,'' but has not received such a proposal.

Cohen stated that when he received that letter, he phoned Loftis' office and told her secretary that the dates were acceptable, and he asked her to get back to him. He did not send a letter confirming that phone call. Cohen further stated that he received no return phone call or letter from Respondent attorney's office confirming any of those dates.

Burke, on the other hand, testified that after sending her letter of June 29, she received no communication from Cohen.

The mid-July dates came and went, with no communication from either side. Cohen, although allegedly having told Loftis' secretary that the dates were acceptable, did not follow the matter up until September 10. Respondent's attorney, allegedly not hearing from Cohen, was content to let the matter ride until she heard again from Cohen.

On September 10, Cohen sent a letter to Loftis, suggesting dates in early October. Included in the letter was a proposed collective-bargaining agreement.

On September 11, Loftis called Cohen and left word that she would be out of town during the period that Cohen suggested for bargaining.

On September 25, Loftis sent a letter to Cohen, which stated that she was available on 6 days in mid-October. Loftis' letter also noted that no reply was received to Burke's letter of June 29.

Cohen called Loftis' office and a first bargaining meeting was arranged for October 19.

On October 19, Loftis appeared at the meeting and presented the following letter to Cohen and the union officials who were present:

> My client has received unsolicited information which serves to indicate that the majority of its employees do not desire to be represented by Local 69, H.E.R.E.
>
> This information, in combination with the inability of the Union to arrange or respond to the restaurant's earlier requests to schedule negotiation dates, appears to indicate that the basis for bargaining is no longer viable. Consequently, the company does not wish to bargain at this time. Quite obviously, we anticipate that the NLRB will wish to inquire further. We welcome such action.

Cohen told Loftis that her client was playing a ''game,'' and attempted to have her bargain, but Loftis refused, saying that she had no authority to negotiate, and could not and would not do so.

Thereafter, no bargaining sessions were scheduled or held.

A. *Respondent's Defenses*

Respondent argues that it had a good-faith doubt that the Union represented a majority of its employees. It obtained such a doubt when a majority of its employees told its vice president, Angelica Cerrone, that they did not wish to be represented by the Union. Respondent also argues that the Union was not diligent in seeking bargaining. Accordingly, Respondent contends that it properly refused to bargain with the Union on October 19.

Cerrone testified that on about April 28, 1990, at about the time she agreed to bargain with the Union, a fire destroyed part of the restaurant. The establishment was closed until May 13, when the first level was reopened. Thereafter, the entire restaurant was reopened for business on July 1.

Cerrone testified that on July 28, 1990, when she posted the Board notice pursuant to the settlement agreement, employees asked her questions about it. She explained that the notice was sent by the Board, and that Respondent was required to bargain with the Union. She advised them that if they had other questions, they should contact the Board. She testified generally that they said they were not interested in the Union and they would have nothing to do with it. She told them that it was not up to her, and that they should contact the Board.

Eight unit employees testified.

Ricardo Hernandez and *Jose Chavez* both testified that they did not speak to any Respondent official concerning whether they wanted the Union to represent them.

Felieb Fouaud: Fouaud testified that when the notice was posted in July, he approached Cerrone and asked her what it was. She said that it was related to the Union. Fouaud replied that he did not want it, he believed that there was no need for it, and that she could consider him out of it.

Cerrone testified that when she posted the notice, Fouaud told her that he did not want to be involved in this ''nonsense,'' and wanted nothing to do with it. Cerrone told him that it was out of her hands, and they should contact the Board if they had a problem. Fouaud replied that he would not cooperate and did not want the Union.

Rinaldo Hernandez: Hernandez testified that when the notice was posted, he approached Cerrone and asked what it related to. She said it concerned the Union. He stated that he did not understand it. He told Cerrone that he did not want the Union, adding that he did not want to be involved with any problems.

Sammy Mahmoud: Mahmoud, employed by Respondent for about 11 years, testified that some time after the fire in April 1990, he initiated a conversation with Cerrone, and told her that he did not want the Union to represent him, which was his own decision. Mahmoud further stated that he received three to four phone calls from the Board. The Board agent asked him to appear at the Board's offices to give testimony. Since his wife does not speak English well, he put his telephone answering machine on because he did not wish to be bothered, and told Cerrone that he did not want to ''go ahead with this thing.'' He also told the Board agent that he did not want the Union. He received one phone call from Union Business Agent Ray Marten.

Cerrone testified that Mahmoud spoke to her when the notice was posted in July, and again in September. In September, Mahmoud called her at home and told her that he told Marten that he was not interested and would not cooperate. Marten testified that in September, he phoned Mahmoud to inform them of the upcoming negotiation, and to inquire about employee morale. Mahmoud told him that some of the employees were afraid.

David Marroquin: Marroquin, a waiter, testified that following the fire, he spoke to Gerrino Razza, Respondent's president, and told him he wanted nothing to do with the Union. Marroquin stated that he did not want the Union because he did not understand the benefits that were available from the Union, and he wished to work in peace with Respondent and his friends at work. He further stated that the Union phoned him once. He told Cerrone and Razza, twice,

that he did not want the Union, the last conversations being after the fire. One of the conversations occurred when the notice was posted.

Trancito Marroquin: Trancito Marroquin testified that after the notice was posted in July 1990, he initiated a conversation with Cerrone, and told her that all the employees, including him, did not want the Union in the restaurant. In October 1990, he told Cerrone that all the employees had agreed that they were not interested in having the Union come into the restaurant. Cerrone testified that Marroquin told her that he changed his phone number because he wanted to have privacy, and did not want any calls from the Union because he was not interested in the Union.

Miguel Orantez: Orantez, a waiter, testified that after the restaurant reopened subsequent to the fire, he approached Cerrone and told her that he did not want the Union.

B. *Respondent's Payroll and Further Events*

In the week ending October 19, when Respondent refused to bargain with the Union, it employed 11 employees, 8 of whom testified here. The other three employees are John Campoverde, Freddy Galaia, and Ciro Guzman, as to whom there was no testimony concerning their union sentiments. The 8 employees are part of the 14 employees who were employed in about August 1989, when the prior charge was filed.

It should be noted that 12 employees were employed immediately before the fire, which occurred on April 28, 1990.

Cerrone testified that after she posted the notice on July 28, all the waiters approached her within the next few days and asked her what it was about. She told them that as part of a settlement agreement, Respondent was required to bargain with the Union. She testified generally that the waiters responded that they were not interested, and would have nothing to do with it. She replied that it was not up to her, and that they should contact the Board if they had any questions.

Cerrone testified specifically about Marcos Jimenez, a bartender, who left Respondent's employ in late September 1990. She stated that he told her that the Union called him several times, and that he did not need the ''pressure.'' He also told her that he did not want to get involved and was not interested in what was happening.

Cerrone also testified generally that waiter Tito Freier was part of the group of waiters, as was Jose Chavez, who said that they did not want the Union. However, in view of Chavez' definite testimony that he had no discussion with any Respondent official concerning the Union, I do not credit Cerrone's testimony concerning Chavez.

Cerrone testified that after July 1990, every employee approached her, and spoke to her as set forth above. Following those conversations, she believed that a majority of employees no longer wished to be represented by the Union. She waited until late September, when her father, Gerrino Razza, Respondent's president, returned from Italy where he was vacationing, to discuss this matter with him. In addition, although she was aware of the employees' disinterest in the Union she did not mention this to her attorney until early October, after she spoke to her father, although she spoke to counsel weekly during that period, and knew that her attorney was arranging bargaining meetings with the Union.

On September 25, Respondent Attorney Loftis sent a letter to Union Attorney Cohen suggesting various bargaining dates.

In the first week in October, Cerrone told Loftis that she believed that she should not have to bargain with the Union because all Respondent's employees told her that they were not interested in the Union. They determined that Respondent would refuse to bargain with the Union.

On October 15, Cohen called Loftis' office, and a bargaining session for October 19 was agreed on.

As set forth above, on October 19, Loftis appeared at the meeting, and presented a letter which stated that Respondent refused to bargain with the Union because it had received information which indicated that a majority of its employees do not wish to be represented by the Union, and for the further reason that the Union had been unable to arrange or to respond to the Respondent's previous requests to schedule negotiation dates.

C. *Analysis and Discussion*

The complaint alleges that Respondent refused to bargain by withdrawing recognition from the Union at a time when it did not have a good-faith doubt as to the Union's majority status based on objective considerations.

In *Poole Foundry & Machine Co.*, 95 NLRB 34, 36 (1951), the Board considered this issue and stated:

> It is well settled that after the Board finds that an employer has failed in his statutory duty to bargain with a union, and orders the employer to bargain, such an order must be carried out for a reasonable time thereafter without regard to whether or not there are fluctuations in the majority status of the union during that period. Such a rule has been considered necessary to give the order to bargain its fullest effect, i.e., to give the parties to the controversy a reasonable time in which to conclude a contract. Similarly, a settlement agreement containing a bargaining provision, if it is to achieve its purpose must be treated as giving the parties thereto a reasonable time in which to conclude a contract. We therefore hold that after providing in the settlement agreement that it would bargain with the Union, the Respondent was under an obligation to honor that agreement for a reasonable time after its execution without questioning the representative status of the Union.

Respondent admits that on April 28, 1990, it agreed to recognize and bargain with the Union. The settlement agreement requiring bargaining between the parties was approved by the Regional Director on July 25, 1990, and Respondent withdrew recognition on October 19, 1990.

''It is well settled that a settlement agreement containing bargaining provisions must be complied with for a reasonable time. The test for determining what is and what is not a reasonable period of time is 'what transpires during the time period under scrutiny rather than the length of time elapsed.''' *King Soopers, Inc.*, 295 NLRB 35 at 37 (1989).

The factors the Board considers in determining what constitutes a reasonable period of time for bargaining include whether (a) the parties are bargaining for a first contract; (b) the employer engaged in meaningful good-faith negotiations over a substantial period of time; and (c) an impasse in nego-

tiations had been reached. *VIP Limousine*, 276 NLRB 871, 877 (1985).

Based on the facts, I must conclude that a reasonable period of time for bargaining had not elapsed when Respondent withdrew recognition and refused to bargain with the Union.

The period of time to be calculated has been held to be the time between which the settlement agreement was approved and the withdrawal of recognition, because the obligation to bargain formally arose only when the settlement agreement was approved. *King Soopers*, supra. Here, nearly 3 months elapsed between the time the settlement agreement was approved and Respondent's withdrawal of recognition. Even if the earliest possible time that Respondent could be deemed to have an obligation to bargain with the Union—from April 28, 1990, when it agreed to recognize and bargain—to October 19 when it withdrew recognition, a period of 6 months, it cannot be said that a reasonable period of time for bargaining had elapsed.

Here, the parties attempted negotiations toward a first contract. The only negotiations which may be said to have occurred were the Union's transmittal of its proposed contract to Respondent. No meaningful negotiations took place at all. In fact, at the first scheduled negotiating session on October 19, when the Union's attorney and officials were present and ready to bargain, Respondent appeared with a letter in which it withdrew recognition and refused to bargain. In fact, Respondent's attorney stated at that meeting that she had no authority to bargain and would not and could not do so. Obviously, no impasse in negotiations had been reached. In fact, negotiations had not yet even begun.

Under these circumstances, considering what occurred during the time in question, and not the mere lapse of time, when even the first bargaining session was met by a withdrawal of recognition, it must be concluded that a reasonable period of time for bargaining had not elapsed.

Respondent argues that a reasonable period of time for bargaining has elapsed. It contends that much of the delay within the period of time at issue was caused by the Union, which indicated an unwillingness or lack of interest in bargaining. As proof of this, Respondent relies on its letter of June 29, sent to Union Attorney Cohen, offering certain dates for bargaining. Cohen testified that he phoned Respondent's attorney and advised its secretary that all such dates were available to him. Burke denied that Loftis' office received such a call, and I credit Burke. The mid-July dates suggested by Burke and admittedly accepted by Cohen went by without any communication from Cohen. He sent no letter confirming the dates, and finally when Loftis sent a letter on September 25 confirming new dates, she noted that Cohen had not responded to the June 29 letter. That accusation went without comment by Cohen which leads me to believe that he did not respond to that letter. Respondent also contends that Cohen's earlier letter setting forth bargaining dates which he knew were not acceptable to Respondent is further evidence of the Union's dilatory tactics which should lead to the conclusion that a reasonable period of time for bargaining has elapsed.

Nevertheless, I find that Cohen's actions, including the 2-1/2-month delay between Burke's June 29 letter and Cohen's September 10 letter offering new dates for bargaining is not fatal to General Counsel's case. The setting of a bargaining date was not unreasonably delayed by the Union. In fact, Cohen's first request for bargaining was sent 1 month before the settlement agreement was approved by the Regional Director. Cohen did communicate with Loftis' office as I have found above, in an effort to reach a mutually agreeable first bargaining date. The delay between June 29 and September 10 was unfortunate, but 10 delays of this type in agreeing to a bargaining session are not uncommon in labor relations, and there was no showing that Respondent was prejudiced by this delay. *Driftwood Convalescent Hospital*, 302 NLRB 586 (1991). In fact, Loftis was unavailable at certain times due to being out of State, and when her law offices were moved.

I accordingly cannot find that the Union's alleged delay in seeking negotiations was unreasonable or that it relieved Respondent of its obligations under *Poole*.

Respondent also argues that it properly withdrew recognition from and refused to bargain with the Union because it had a good-faith doubt, based on objective considerations, that the Union represented a majority of its employees.

The Board has held that before it may consider that issue, a finding must first be made that a reasonable period of time for bargaining has elapsed. *Driftwood Convalescent Hospital*, 302 NLRB 586 (1991).

> We need not decide whether the employee petition could support a good-faith doubt as to the Union's majority status or a finding of no majority in fact. A reasonable time for bargaining had not elapsed. Absent a threshold finding that a reasonable time for bargaining has elapsed, evidence of actual employee disaffection with the Union is irrelevant. [*Textron, Inc*., 300 NLRB 1124 at 1133 (1990), citing *Royal Coach Lines*, 282 NLRB 1037, 1038 (1987).]

Inasmuch as I have found that a reasonable time for bargaining has not elapsed, I therefore find and conclude that Respondent was not privileged to question the Union's majority status in October 1990, and its withdrawal of recognition and refusal to bargain violated Section 8(a)(5) and (1) of the Act.

Assuming arguendo, that in October 1990, when Respondent withdrew recognition and refused to bargain with the Union, the Union enjoyed only a rebuttable presumption of majority support, such presumption can be rebutted if:

> The employer affirmatively establishes either (1) that at the time of the refusal the union in fact no longer enjoyed majority representative status, or (2) that the employer's refusal was predicated on a good-faith and reasonably grounded doubt of the union's continued majority status. As to the second of these, i.e., ''good-faith doubt,'' two prerequisites for sustaining the defense are that the asserted doubt must be based on objective considerations and it must not have been advanced for the purpose of gaining time in which to undermine the union. [*King Soopers, Inc*., 295 NLRB 35 at 38 (1989), citing *Terrell Machine Co*., 173 NLRB 1480, 1481 (1969).]

Respondent argues that it had an objectively based good-faith doubt that the Union represented a majority of its employees when it withdrew recognition on October 19. It bases

its assertion on the conversations between Cerrone and Respondent's employees, as set forth above.

Some suspicion is raised as to why Cerrone did not immediately contact her attorney and give her this information. After all, Cerrone knew at that time that Loftis' office was arranging a first bargaining meeting. Nevertheless, Cerrone's explanation, that she was awaiting the return from Italy of Respondent's president, was reasonable. Shortly after his return and their discussion of what occurred that summer, Cerrone contacted Loftis with the information she had concerning the employees' disinterest in the Union.

On October 19, the unit consisted of 11 employees. ''The relevant date at which to consider the bona fides of the employer's doubts is the date that recognition is withdrawn.'' *NLRB v. Flex Plastics*, 726 F.2d 272, 275 (6th Cir. 1984). Accordingly, Cerrone's testimony concerning Marcos Jimenez, who left Respondent's employ in September 1990, and Tito Freier, who was not employed at the time of withdrawal of recognition, is irrelevant. Even if Cerrone's testimony concerning Jimenez should be considered, Jimenez did not state unequivocally that he did not wish to be represented by the Union. Rather, he told Cerrone that he did not need the pressure, did not want to get involved, and was not interested. These vague comments do not amount to a desire not to be represented by the Union. Similarly, there was no direct testimony concerning what, if anything, Freier specifically told Cerrone.

Of the 11 employees, 8 testified here. Two, Chavez and Ricardo Hernandez, testified that they spoke to no Respondent official concerning the Union. Respondent relies on the testimony of the remaining six to support its good-faith doubt in the Union's representational status. I find, in agreement with Respondent, that on October 19, it had a good-faith doubt as to whether the Union represented a majority of its employees. Thus, six employees testified, as set forth above, that each approached Cerrone shortly after the settlement agreement was posted in late July 1990, and told her that he did not want the Union. I am aware that Rinaldo Hernandez stated that he did not understand the notice, and David Marroquin testified that he did not understand the Union's benefits, which may cast some doubt on their reasons for not wanting the Union. However, it does not appear that they expressed those reasons to Cerrone. Rather, they unequivocally told her that they did not want the Union to represent them. I accordingly find that such expressions properly caused Cerrone to have a good-faith doubt that the Union represented a majority of Respondent's employees.

I do not regard as probative, the General Counsel's suggestion that prior to the settlement agreement, certain employees were allegedly subject to various interference with their Section 7 rights. These matters were settled as set forth in the settlement agreement, and no charge, other than the instant refusal to bargain charge, had been filed thereafter.

CONCLUSIONS OF LAW

1. Respondent Gerrino, Inc. d/b/a Gerrino Restaurant is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Hotel Employees and Restaurant Employees Union, Local 69, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining:

> All full time employees including kitchen employees, chef, bartenders, waiters, waitresses, bus boys, cooks and dishwashers, employed at its Hoboken, New Jersey facility, but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, and any individuals employed by parent or spouse.

4. At all times since July 28, 1990, the Union has been and is currently the exclusive collective-bargaining representative of the employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. Respondent, by withdrawing recognition from the Union on October 19, 1990, and by failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit since that date, has violated Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, it is recommended that it be ordered to cease and desist therefrom, and take certain affirmative action which is necessary to effectuate the policies of the Act.

Ordinarily, in cases of this type, Respondent is ordered to bargain in good faith with the Union for a reasonable, but unspecified time. However, the General Counsel amended the complaint to set forth its request for an order requiring Respondent to bargain in good faith with the Union, on request, for a reasonable period of time construed as at least 6 months.

I find this request to be proper under the circumstances of this case. I have found that a reasonable period of time for bargaining had not elapsed, notwithstanding that nearly 3 months had gone by from the time the settlement agreement was approved until the withdrawal of recognition. Here, following Respondent's agreement to bargain in good faith with the Union, only one bargaining meeting was scheduled, and at that meeting Respondent withdrew recognition from the Union and refused to bargain with it. In this case, especially where no bargaining at all has taken place, and inasmuch as the parties will be attempting to arrive at a first contract, it is imperative that a specific time be set forth in order to enable the parties to have the fullest opportunity to bargain in good faith toward an initial agreement.

I will accordingly recommend that the parties be required to bargain for a reasonable period of time to be construed as at least 6 months.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

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[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be

ORDER

The Respondent, Gerrino, Inc. d/b/a Gerrino Restaurant, Hoboken, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from and refusing to bargain collectively in good faith concerning wages, hours, and other terms and conditions of employment with Hotel Employees and Restaurant Employees Union, Local 69, AFL–CIO as the exclusive collective-bargaining representative of its employees in the following appropriate collective-bargaining unit:

> All full time employees including kitchen employees, chef, bartenders, waiters, waitresses, bus boys, cooks and dishwashers, employed at its Hoboken, New Jersey facility, but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, and any individuals employed by parent or spouse.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain collectively in good faith with Hotel Employees and Restaurant Employees Union, Local 69, AFL–CIO as the exclusive collective-bargaining representative of the employees in the bargaining unit found appropriate above, for a reasonable period of time consisting of not less than 6 months, with respect to their wages, hours of work, and other terms and conditions of employment, and if an agreement is reached, embody it in a signed contract.

(b) Post at its facility copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withdraw recognition from and refuse to bargain collectively in good faith concerning wages, hours, and other terms and conditions of employment with Hotel Employees and Restaurant Employees Union, Local 69, AFL–CIO as the exclusive collective-bargaining representative of our employees in the following appropriate collective-bargaining unit:

> All full time employees including kitchen employees, chef, bartenders, waiters, waitresses, bus boys, cook and dishwashers employed at our Hoboken, New Jersey facility, but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, and an individuals employed by parent or spouse.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, recognize and bargain collectively in good faith with Hotel Employees and Restaurant Employees Union, Local 69, AFL–CIO as the exclusive collective-bargaining representative of the employees in the bargaining unit found appropriate above, for a reasonable period of time consisting of not less than 6 months, with respect to their wages, hours of work, and other terms and conditions of employment and if an agreement is reached, embody it in a signed contract.

GERRINO, INC. D/B/A GERRINO RESTAURANT